

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHIRLEY VAUGHN)	
Claimant)	
VS.)	
)	Docket No. 184,562
CITY OF WICHITA)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent, City of Wichita, appeals from an Award entered by Administrative Law Judge Jon L. Frobish on June 27, 1997. The Appeals Board heard oral argument on December 12, 1997.

APPEARANCES

Claimant appeared by her attorney, Joni J. Franklin of Wichita, Kansas. Respondent appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Randall C. Henry of Hutchinson, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record listed in the Award and has adopted the stipulations listed in the Award.

ISSUES

The Award by the Administrative Law Judge grants claimant benefits based upon a 10 percent permanent partial general body disability. On appeal, respondent contends claimant's injuries did not arise out of and in the course of her employment. Respondent also disputes the finding as to the nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award should be affirmed.

Claimant worked as a janitor for the City of Wichita at the Wichita airport. On November 3, 1993, she injured her neck and back when the chair in which she was sitting broke. Claimant was on break at the time at Sara's Ice Cream Parlor. Sara's Ice Cream Parlor leases space at the airport from the city.

This case was previously presented to the Appeals Board as an appeal from a preliminary hearing Order. The appeal was based upon an agreed statement of the facts which included a statement that claimant was on a lunch break at the time of the accident. The sole issue presented at the time of the appeal of the preliminary hearing Order was whether the accident occurred on the employer's premises. The Administrative Law Judge had found that Sara's Ice Cream Parlor was part of the employer's premises. The Appeals Board disagreed and reversed that finding.

Additional facts have now been developed and presented as evidence in this case. The evidence indicates that the injury occurred while claimant was on a paid break, not during her lunch hour. Although respondent contends to the contrary, the Appeals Board also finds that claimant was on call during her break. She carried a beeper and could be disciplined for not responding to calls during the course of the break. The evidence also indicates that claimant was being paid during the break and was required to remain within the airport terminal during the break.

The Appeals Board agrees with the conclusion by the Administrative Law Judge that the injury arose out of and in the course of claimant's employment. It arose in the course of employment because it was a paid break. It arose out of the employment in that the break activity and its location were in part for the benefit of the employer. See Larson's Workers' Compensation Law, § 15.54, 4-181 (1997).

The Appeals Board also agrees with and affirms the finding that claimant sustained a 10 percent permanent partial general disability. Respondent disputes this finding on the basis of the statement by the claimant that the current injuries did not involve her neck. The finding of disability, on the other hand, is based upon the opinions by Greg A. Ricke, M.D. It appears from his deposition testimony and his report that he has given a rating for the

cervical spine. It appears, however, that the injury is to the lower cervical area. Claimant has testified to pain in her mid back. The potential discrepancy here creates some confusion. However, it seems clear from Dr. Ricke's testimony that he is rating disability resulting from the injury in question in this case. The Board concludes that the logical reading of Dr. Ricke's testimony supports a conclusion that claimant sustained a 10 percent permanent partial general disability as a result of the injury in the accident at issue here.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Jon L. Frobish, dated June 27, 1997, should be, and is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Shirley Vaughn, and against the respondent, City of Wichita, for an accidental injury which occurred November 3, 1993, and based upon an average weekly wage of \$375.96 for 41.5 weeks of compensation at the rate of \$250.65 per week or \$10,401.98 which is presently due and owing in one lump sum less amounts previously paid.

The Appeals Board also approves and adopts all of the orders stated in the Award by the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
 Edward D. Heath, Jr., Wichita, KS
 Randall C. Henry, Hutchinson, KS
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Director